

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ABDUL WAHID JAFFARI,

Plaintiff,

v.

**MERRICK B. GARLAND, ATTORNEY
GENERAL, et al.,**

Defendants.

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Civil Action No. **3:23-cv-1698-L-BW**

ORDER

On November 27, 2024, the Findings, Conclusions, and Recommendation of the United States Magistrate Judge (“Report”) (Doc. 15) was entered, recommending that the court *sua sponte* **dismiss without prejudice** this action, pursuant to Federal Rule of Civil Procedure 41(b) and 4(m), for failure to prosecute and comply with a court order, and failure to timely serve the defendants. No objections have been filed, and the 14-day period to object after service of the Reports has passed. *See* Fed. R. Civ. P. 72(b)(1)(2); 28 U.S.C. § 636(b)(1)(C). For the reasons stated herein, the court **accepts** the conclusions of the Report; however, for reasons herein explained, the court rejects the magistrate judge’s recommendation that this action be dismissed without prejudice. The court, therefore, **dismisses with prejudice** this action.

Plaintiff Abdul Jaffari (“Plaintiff” or “Mr. Jaffari”) filed his Complaint (Doc. 1) on July 31, 2024, against Merrick Garland, Anthony Blinken, Alejandro Mayorkas, Donald Blome, Andrew Schoefer, Christopher Wray, and Ur Mendoza Jaddou (collectively “Defendants”). He seeks a declaratory or an order compelling government officials to take action on an application for asylum or refugee status that he filed five years earlier. Report 1. On August 3, 2023, then-

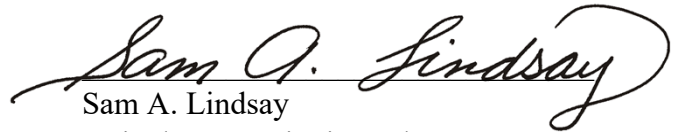
United States Magistrate Judge Irma Ramirez instructed Mr. Jaffari to serve each defendant and to file proof of service. *Id.* at 2 (citation omitted). “On October 19, 2023, Jaffari filed what he considered proof of service on each of the defendants.” *Id.* (citing Doc. 7). The magistrate judge entered two show cause orders and ordered Plaintiff to file proof of service or show cause why he could not serve Defendants. *Id.* at 2-3 (citations omitted). After the case was referred to United States Magistrate Judge Brian McKay, he entered another show cause order on November 12, 2024. *Id.* at 3 (citing Doc. 14). As of this date, Plaintiff has not responded to the Third Show Cause Order. Mr. Jaffari has had almost 500 days to properly serve the Defendants, but he has not done so. *Id.* at 6.

A district court may dismiss an action with prejudice if a litigant refuses to follow a court order if the refusal results from “willfulness or bad faith and is accompanied by a clear record of delay or contumacious conduct.” *Doe v. American Airlines*, 283 F. App’x 289, 291 (5th Cir. 2008) (quoting *F.D.I.C. v. Conner*, 20 F.3d 1376, 1380 (5th Cir. 1994)) (other citations omitted). It is clear, based on the record and information provided in the Report, that Mr. Jaffari willfully refused to comply with multiple court orders. In other words, he stubbornly defied the lawful court orders of two magistrate judges for an extended period of time. In each of the orders, Plaintiff was informed that if he failed to comply with the orders, his action was subject to dismissal. In light of his three failures to comply, the court concludes that a lesser sanction would not achieve compliance by Plaintiff, and dismissal with prejudice is the appropriate remedy. The court uses Rule 41(b) rather than 4(m) because the latter rule only allows dismissal without prejudice. Further, the court determines that there is a clear record of delay and contumacious conduct. He repeatedly failed to follow the magistrate judges’ orders for almost 500 days. For

these reasons, the court determines that dismissing this action with prejudice is the appropriate remedy.

Having considered the file, record in this case, and Report, the court determines that the findings of the magistrate judge are correct, and **accepts** them as those of the court; however, for reasons previously stated, the court **dismisses with prejudice** this action, pursuant to Rules 41(b), because Plaintiff repeatedly failed to prosecute and comply with court orders as directed.

It is so ordered this 18th day of December, 2024.


Sam A. Lindsay
United States District Judge